

IMPLEMENTING ENVIRONMENTAL JUSTICE: OBSTACLES AND OPPORTUNITIES

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I. INTERPRETATIONS OF FEDERAL LEGAL AUTHORITY - GENERAL

- A. December 1, 2000 *Memorandum from EPA Office of General Council to Assistant Administrators regarding EPA statutory and regulatory authorities under which Environmental Justice issues may be addressed in permitting*. Section V (Clean Air Act attached)
- B. Environmental Law Institute Research Report, OPPORTUNITIES FOR ADVANCING ENVIRONMENTAL JUSTICE: AN ANALYSIS OF U.S. EPA STATUTORY AUTHORITIES, (Clean Air Act, Section in Chapter 11 attached).
- C. National Academy of Public Administration, ENVIRONMENTAL JUSTICE IN EPA PERMITTING: REDUCING POLLUTION IN HIGH-RISK COMMUNITIES IS INTEGRAL TO THE AGENCY'S MISSION (December 2001) (Executive Summary attached).
- D. Executive Order on Environmental Justice: Probably pertains to agencies receiving delegated authority under federal law.
- E. Title VI: Programs and policies, recipients of federal funds. EPA administrative review.
- F. Recommended Reading:
 - 1. Denis Binder, et. al., *A Survey of Federal Agency Response to President Clinton's Executive Order No. 12898 on Environmental Justice*, 31 ENVTL. L. REP. 11133 (2001).
 - 2. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, REPORT ON INTEGRATION OF ENVIRONMENTAL JUSTICE IN FEDERAL AGENCY PROGRAMS (December 2000).
 - 3. NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL, REPORT: ENVIRONMENTAL JUSTICE IN THE PERMITTING PROCESS (July 2000)
 - 4. REPORT OF THE TITLE VI IMPLEMENTATION ADVISORY COMMITTEE: NEXT STEPS FOR EPA, STATE AND LOCAL ENVIRONMENTAL JUSTICE PROGRAMS (1999).
 - 5. Richard J. Lazarus and Stephanie Tai, *Integrating Environmental Justice into EPA Permitting Authority*, 26 ECOLOGY L. Q. 617 (1999).

II. STATE LAWS TO ADDRESS ENVIRONMENTAL JUSTICE

- A. SB 115: Requires the California Environmental Protection Agency (Cal/EPA) to consider environmental justice when considering, designing, and operating its programs and those of its boards, departments, and offices.
- B. SB 89: Interagency working group on environmental justice and advisory council.
- C. AB 2390: Requires diesel mitigation programs for air districts with populations over 1 million. Endorses performance standards.
- D. AB 1553: Requires the Office of Planning and Research to develop guidelines for general plans and basic land-use planning documents which:
 - (1) Accomplishes equitable distribution of new public facilities and services;
 - (2) Avoids over concentrating industrial facilities near schools and residential dwellings;
 - (3) Avoids locating new schools and residences near industrial facilities;
 - (4) Expands and enhances transit development to minimize traffic and pollution impacts.
- E. SB 32: Requires Cal/EPA to develop a rating system for brownfield development. Also requires outreach and public workshops, and publication of an information document to assist citizen participation in brownfield development.
- F. SB 828: Deadline for convening Internal Working Group (IWG) and Advisory Council and mandates Cal/EPA to submit a report to the legislature on implementation every three years.
- G. SB 25 (Environmental Health Protection for Children): Requires the California Air Resources Board (CARB):
 - (1) To review and revise ambient health-based air quality standards for up to five toxic air contaminants that may cause infants and children to be especially susceptible to illness;
 - (2) To evaluate and expand the current monitoring network; and
 - (3) To evaluate 15 toxic air contaminants annually.
- H. SB 1542: Requires the Integrated Waste Management Board to provide models for the consideration of environmental justice in the siting of landfills by local authorities.
- I. AB 2312: Establishes an environmental justice small grants program to be administered by Cal/EPA for projects that address environmental justice issues.

III. AGENCY IMPLEMENTATION – AIR RESOURCES BOARD

ARB Environmental Justice Plan: Based upon Neighborhood Assessment Work Plan (NAWP) developed by ARB staff.

A. Neighborhood Assessment Work Plan

- Evaluation of commutative impacts using GIS
- Develop source-receptor-based cumulative impact/risk assessment methodologies
- Use Barrio Logan Pilot study to develop an understanding of cumulative exposures and neighborhood-scale monitoring
- Refine methodologies in Barrio Logan Study by testing in two other areas
- Initiate research to fill data gaps
- Near term risk reduction strategies for high exposure/risk areas identified by neighborhood monitoring/modeling, and evaluate long-term strategies
- Develop evaluation guidelines for methodologies used to determine if cumulative impact is unusually high

B. ARB Environmental Justice Plan

- Integrate EJ into all programs, policies and regulations
- Improve outreach
- Reduce health risks
- Strengthen enforcement
- Reduce cumulative impacts
- Support research and data collection

C. NATIONAL ACADEMY OF PUBLIC ADMINISTRATION, MODELS FOR CHANGE: EFFORTS BY FOUR STATES TO ADDRESS ENVIRONMENTAL JUSTICE (June 2002) (discussing ARB efforts)

IV. REGULATORY DYNAMICS IN STANDARD SETTING

Rechtschaffen and Gauna, ENVIRONMENTAL JUSTICE, LAW, POLICY AND REGULATION,
Chapter VI Standard Setting (attached).

- A. Disincentives to revise NAAQS at the federal level
- B. Variable standards -- usual policy justifications may be absent in the environmental justice context (using Water Quality Standards as a case study)
- C. Assumptions that do not conform to reality
- D. Narrow interpretations of legal authority
- E. Shifting implementation to alternative sites of regulatory activity
- F. Regulatory inertia
- G. Resting on accomplishments: policy statements vs. implementation.
- H. Political will in a high stakes game
- I. Environmental Justice vs. Regulatory Innovation -- markets and other performance standards

V. OPPORTUNITIES

- A. SIP approval process
- B. Disclosure initiatives -- enforcement profile of violators on web site
- C. Model SEPs for local districts
- D. Using oversight authority
- E. Community workshops: compliance monitoring, training and education
- F. A performance standard for Environmental Justice - we manage what we measure